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October 11, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12 St. SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, MM Docket No. 99-25 – Creation of a
Low Power Radio Service

Dear Ms. Dortch:

On Tuesday, October 9, Brandy Doyle of Prometheus Radio Project and Angela Campbell, Laura Moy, and law student Amanda Burkett of the Institute for Public Representation, Counsel for Prometheus Radio Project (collectively “Prometheus representatives”), met with Lyle Elder of Chairman Genachowski’s office.

Prometheus representatives explained that Prometheus Radio Project has been the leading low-power FM (“LPFM”) advocacy group since 2000, when we advocated for the creation of LPFM as a noncommercial local service. Prometheus has helped hundreds of organizations to build and operate community radio stations. Over the past decade, Prometheus led the successful bipartisan effort to pass the Local Community Radio Act of 2010, which directed the Commission to expand low power FM licensing nationwide. Since the

* Admitted to the Maryland bar only; DC bar membership pending. Practice supervised by members of the DC bar.

passage of the Local Community Radio Act, Prometheus has received thousands of inquiries from groups seeking to apply for new LPFM stations. The organization produces a variety of tools and resources to help grassroots organizations reach the airwaves.

Second-Adjacent Waivers Will Allow LPFM to Serve Urban Areas

Prometheus representatives argued in support of a second-adjacent frequency waiver standard modeled after the FM translator rules. Ms. Doyle explained that the Local Community Radio Act authorizes the Commission to grant waivers when LPFM stations will not cause interference to full-power stations,¹ which is the same standard the Commission uses when licensing FM translators. The Act also directs the Commission that LPFM and FM translators should be treated as equal in status. Ms. Doyle explained that current second-adjacent frequency restrictions keep LPFM stations out of urban areas because of lack of space on other frequencies, even though translators are regularly licensed in urban areas. Ms. Doyle also explained that there was no technical reason not to grant these waivers, as FM translators operating at higher power levels than LPFM stations already use second adjacent frequencies without incident. The Commission should adopt a waiver standard consistent with the intent of Congress in the Local Community Radio Act: if a station on a second-adjacent frequency will not interfere with an existing station, then the FCC should grant an LPFM license to a broadcaster for that frequency.

A Local Origination Requirement for LPFM Licensees Will Better Ensure that LPFM Stations Serve Local Community Needs

Prometheus representatives explained that LPFM was established to serve uniquely local needs. There has only been one round of LPFM applications in the past, and the next round will likely be the last opportunity to establish LPFM

¹ Local Community Radio Act, Pub. L. No. 111-371, 124 Stat. 4072 (2011), § 3(b)(2)(A) (stating that the Commission “may grant a waiver of the second-adjacent channel distance separation requirement to low-power FM stations that establish, using methods of predicted interference taking into account all relevant factors, including terrain-sensitive propagation models, that their proposed operations will not result in interference to any authorized radio service.”).

stations due to spectrum scarcity. The rules governing the first round of applications included one preference point for applicants who pledged to provide eight hours of locally originated broadcasting per day, but in March the Commission sought comment on whether to impose a local origination program requirement instead.² Prometheus filed comments strongly encouraging the Commission to replace the applicant preference point with a requirement that any LPFM licensee produce a minimum of 20 hours per week of locally originated programming.³

Prometheus representatives explained at this meeting that we continue to believe a local origination requirement is necessary to ensure that LPFM licenses are awarded to applicants that are well-situated to serve local needs, rather than to applicants that will not be able to produce local programming and will instead have to air nationally syndicated non-local programming. In comments filed in May, Prometheus Radio Project cited a 2009 study conducted by scholars at Penn State University in support of its position.⁴ The study, which is submitted as Appendix C accompanying this letter, showed that a significant number of LPFM licensees rely on a national network for all or substantially all of their programming. The Commission's recent literature review on the critical information needs of the American public also cited the Penn State, noting that "the original vision" of LPFM to address the critical information needs of underserved communities "is to some extent being subverted by national organizations that are creating de facto programming networks that are undermining the extent to which LPFM stations are providing locally-produced news and information."⁵

² *Creation of a Low Power Radio Serv.*, Fifth Report & Order, Fourth FNPRM and Fourth Order on Recon, 22 FCC Rcd 3315, 3340 (rel. Mar. 19 2012), at ¶63 (asking, "should we impose a specific requirement that all new LPFM licensees provide locally-originated programming?").

³ Comments of Prometheus Radio Project, filed MM Dkt. No. 99-25 (May 7, 2012) at 35-47.

⁴ *Id.* at 41-42 (citing Colleen Connolly-Ahern, Amit Schejter, Jonathan Obar, & Nadia Martinez-Carrillo, *A Slice of the Pie: Examining the State of Low Power FM Radio Service in 2009* (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2000228 (submitted as Appendix C accompanying this letter)).

⁵ Lewis Friedland, Philip Napoli, Katherine Ognyanova, Carola Weil, & Ernest J. Wilson III, *Review of the Literature Regarding Critical Information Needs of the American Public* 50-51

Moreover, recent research conducted by staff at the Institute for Public Representation demonstrates that the 2009 Penn State research remains relevant to LPFM policymaking moving forward. The findings of this recent research are submitted as Appendix B accompanying this letter.

Prometheus representatives argued that it is not an efficient use of the spectrum to use a radio service that is purposely designed to reach small audiences and provide an outlet for underserved local communities to distribute nationally syndicated programming that could be distributed by satellite radio or the internet. While imposing a local origination requirement of 20 hours per week would not prohibit LPFM stations from forming affiliations with national networks or selecting some non-locally originated programming to serve local needs, it would limit the number of applications by ensuring that only those willing to originate programming could apply. Requiring 20 hours per week is not unduly burdensome; it is less than the eight hours per day currently required to obtain a local origination preference point. At the same time, such a requirement would better ensure that each and every LPFM licensee will fulfill the original intent of meeting local community needs.

The Local Origination Requirement Does Not Violate the First Amendment

Prometheus noted that no commenter in this proceeding has argued that a local origination requirement would violate the First Amendment, thus making it unlikely that anyone could or would bring a constitutional challenge. But in any event, requiring some amount of local origination would not violate the First Amendment. Together with its counsel, the Institute for Public Representation, Prometheus Radio Project submits a written report documenting its First Amendment analysis of the local origination requirement as Appendix A accompanying this letter.

Timing

Finally, Prometheus representatives expressed our hope that the item would be voted on this fall and that the rules would provide sufficient time for community groups with limited resources to prepare their applications.

Respectfully submitted,

/s/

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Counsel for Prometheus Radio Project

Encl: Appendix A: A First Amendment Analysis of a Local Origination Requirement for New LPFM Radio Stations
Appendix B: An Analysis of LPFM National Network Affiliations
Appendix C: A Slice of the Pie: Examining the State of the Low Power FM Radio Service in 2009

cc: Lyle Elder